

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

APRIL LYNNE ACKER
TX-1334010-L

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DOCKETED COMPLAINT NO.
08-154

AGREED FINAL ORDER

On this the 21st day of August, 2009, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the license of April Lynne Acker (Respondent).

In order to conclude this matter April Lynne Acker neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent April Lynne Acker is a Texas state licensed real estate appraiser, holds license number TX-1334010-L, and has been licensed by the Board during all times material to the above-noted complaint cases.
2. On or about October 31st, 2006 and September 6th, 2006, Respondent appraised real property located at 9807 Whistler Drive, Dallas, Texas 75217 ("the Whistler property") and 2414 Preston Road, Denison, Texas 75020 ("the Preston property"), respectively.
3. On or about April 15th, 2008, the Complainant, Jack McComb, filed a staff-initiated complaint with the Board regarding the Whistler and Preston properties, which was based on allegations that the Respondent had produced appraisal reports that were in violation of the Uniform Standards of Professional Appraisal Practice ("USPAP").
4. Thereafter, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103, notified Respondent of the nature of the accusations involved in the complaint and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent's response to the complaint was received.
5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal reports for both properties:

- a) Respondent failed to comply with the record keeping provisions of USPAP's Ethics Rule for both properties;
- b) Respondent failed to comply with the Scope of Work Rule by not identifying the problem to be solved adequately and the scope of work necessary to do so for the Preston property appraisal report;
- c) Respondent misrepresented the owner of record for the Preston property and failed to analyze and fully disclose a prior sale of the Preston property;
- d) Respondent failed to identify and report the site description for the Preston property adequately because she misrepresented that the Preston property was located within the city limits of Denison when it was not;
- e) Respondent failed to identify and report the correct zoning for both properties, and used an incorrect flood map;
- f) Respondent failed to identify and analyze correctly the economic supply and demand and market area trends for both properties;
- g) Respondent failed to provide a brief summary of her supporting rationale for her determination of both properties' highest and best use;
- h) Respondent failed to provide support for her analysis and conclusions concerning site value for both properties, and failed to employ appropriate methods or techniques to develop a site value determination, failed to verify, analyze and reconcile the cost new of improvements, and generally failed to employ recognized methods and techniques in her cost approach analysis for both properties;
- i) Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately by selecting inappropriate sales as comparables, did not make appropriate adjustments to the sales she did use and generally did not employ recognized methods and techniques in her sales comparison approach for both properties;
- j) Respondent failed to analyze and report on the agreement of sale for the Whistler property or document her efforts to obtain it; and,
- k) Respondent's reports for both properties contain substantial errors of omission and commission as detailed above which resulted in misleading appraisal reports for both properties which were not credible.

6. Respondent appraised the Preston property despite it being a complex residential unit with a transaction value in excess of \$250,000.00.

CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.
2. Respondent violated the following provisions of USPAP as prohibited by 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule (record keeping provisions); USPAP Standards Rules: 1-2(h) & 2-2(b)(vii); 1-2(e)(i) & 2-2(b)(iii); 1-2(e)(iv) & 2-2(b)(iii); 1-3(a) & 2-2(b)(viii); 1-3(b) & 2-2(b)(ix); 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-5(a) & 2-2(b)(viii); 1-5(b) & 2-2(b)(viii); 1-1(a); 1-1(b); 1-1(c); and, 2-1(a).
3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making material misrepresentations and omitting material facts.
4. Respondent violated 22 TEX. ADMIN. CODE §§153.20(a)(2) and 153.8(c)(1) by appraising real property outside of the scope of practice of her license.

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent shall:

- a. Have her license suspended for two years with that suspension being fully probated under the under the following conditions:
 - i. During the entire twenty-four month probation period Respondent shall submit on a form prescribed by the Board, an appraisal experience log to the Board every three months. The log shall detail all real estate appraisal activities she has conducted during the previous three month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting that the log is true, complete and fully accurate. Upon request from the Board, Respondent shall provide copies of her appraisal reports and work files for any appraisal assignments she performs during the course of her period of probation within twenty days of notice of any such request;
 - ii. Respondent shall timely complete all of the remedial coursework required in this Order;
 - iii. Respondent shall retake, receive a passing grade on and submit documentation to the Board showing successful passage of the examination for state licensure within 12 months of the effective date of this Agreed Final Order;

- iv. Respondent shall pay an administrative penalty of \$2,000.00, which shall be fully probated under the condition that Respondent timely and fully comply with all of the terms of this Agreed Final Order;
- b. Attend and complete a minimum, 15 classroom-hour course in USPAP;
- c. Attend and complete a minimum, 15 classroom-hour course in the Cost Approach;
- d. Attend and complete a minimum, 15 classroom-hour course in Residential Report Writing;
- e. Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies;
- f. Attend and complete a minimum, 15 classroom-hour course in the Sales Comparison Approach; and,
- g. Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

ALL CLASSES required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for licensure.

Failure to timely comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent as provided for by TEX. OCC. CODE § 1103.518, including, but not limited to, revocation of the above-noted probation.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 3rd day of August, 2009.

April Acker
APRIL LYNNE ACKER

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 3rd day of August, 2009, by APRIL LYNNE ACKER, to certify which, witness my hand and official seal.

Lisa Spencer
Notary Public Signature



Lisa Spencer
Notary Public's Printed Name

Signed by the Commissioner this 21st day of August, 2009.

Loretta DeHay
Loretta DeHay, Interim Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 21st day of August, 2009.

Clinton P. Sayers
Clinton P. Sayers, Chairperson
Texas Appraiser Licensing and Certification Board